

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

EDWARD VERHOVEC,

Plaintiff,

:

Case No. 3:14-cv-363

- vs -

District Judge Walter Herbert Rice

Magistrate Judge Michael R. Merz

CITY OF TROTWOOD, OHIO, et al.,

Defendants.

:

REPORT AND RECOMMENDATIONS

This case is before the Court on Motion (Doc. No. 35) of Defendants City of Trotwood and Michael J. Lucking and Putative Counterclaim Defendants Stephen McHugh and Amelia Blankenship to Dismiss the Counterclaim of William E. Walker, Jr. (Doc. No. 31). The Motion was filed and served December 19, 2014 (Doc. No. 35, PageID 307). Under S. D. Ohio Civ. R. 7.2, Walker's memorandum in opposition was due to be filed not later than January 12, 2015, but he has neither filed such a memorandum nor sought or received any extension of time to do so.

Walker's Counterclaim should be dismissed as to Putative Counterclaim Defendants Stephen McHugh and Amelia Blankenship for the reason they have given, to wit, that they are not opposing parties as to whom a counterclaim can be filed under Fed. R. Civ. P. 13.

Because Walker's Counterclaim as to all four counterclaim Defendants is a permissive counterclaim under Fed. R. Civ. P. 13, Walker must show an independent basis of federal

jurisdiction. However, the claims he pleads are all Ohio common law claims, not claims arising under federal law.

Therefore it is respectfully recommended that the Motion to Dismiss be GRANTED.

February 23, 2015.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 153-55 (1985).